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Federal Communications Commission
Office of the Secretary



May 3, 2005

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Mr. Donald Abelson
Chief
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

IB Docket No. 05-220
IB Docket No. 05-221

Re: Ex Parte
Docket Nos. 02-34 and 02-248

Dear Mr. Abelson:

ICO Satellite Services G.P. ("ICO") offers its comments on a recent request by TMI Communications and Company Limited Partnership ("TMI") and its affiliate TerreStar Networks Inc. ("TerreStar") that the Bureau redistribute 2 GHz mobile satellite service ("MSS") spectrum to afford sufficient spectrum to establish a fully competitive MSS with an ancillary terrestrial component ("ATC").¹ TMI and TerreStar point to key factors -- the vitality of the competitive market for mobile communications, the technological capabilities of new mobile satellite systems -- underlying 2 GHz licensees' need for adequate spectrum for next-generation MSS services and applications.

As an initial matter, all 2 GHz MSS spectrum must continue to be allocated for satellite services, and not further reallocated for other services. This is especially important given that the resolution of pending appeals of 2 GHz MSS license cancellations could require the Commission to reinstate the licenses and redistribute 2 GHz spectrum among the remaining licensees, as the Commission authorized when it reinstated the TMI license.² Any attempt to reallocate 2 GHz MSS spectrum for other services would lead to further uncertainty in this band, hampering investment in and development of valuable MSS services.

¹ Letter from TMI and TerreStar to Donald Abelson, Chief, Int'l Bur., FCC (Apr. 20, 2005).

² See *Emergency Application for Review and Request for Stay of Globalstar, L.P.*, 19 FCC Rcd 11548 (2004); see also *ICO Global Communications (Holdings) Ltd. v. FCC*, Case No. 04-1248 (D.C. Cir. Mar. 1, 2005); see also *TMI Communications and Co., Limited Partnership and TerreStar Networks Inc.*, 19 FCC Rcd 12603, 12622 & n.102 (2004).

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ICO supports the TMI-TerreStar request for immediate redistribution of all 2 GHz MSS spectrum to the remaining 2 GHz MSS licensees, provided that it is conditioned upon the outcome of the pending appeals of the 2 GHz MSS license cancellations. The TMI-TerreStar request for redistribution references a Commission requirement that a party seeking assignment of more than one-third of a non-geostationary-like (*e.g.*, MSS) frequency band must provide convincing evidence that "allowing only two licensees in the frequency band will result in extraordinarily large, cognizable and non-speculative efficiencies."³ This requirement is based on a presumption that there must be three or more competitors remaining in order to make "reasonably efficient" use of a frequency band.⁴

In its pending petition for reconsideration, ICO opposed this requirement as ill-conceived at the outset.⁵ The Commission has never defined a satellite market based on a single frequency band. Its analysis of relevant markets for satellite services historically has in fact been much broader. For example, the Commission has previously found that the relevant product market for satellite communications services includes domestic and international telecommunications markets.⁶ It has also specifically considered the services offered by MSS competitors in North America that operate in different frequency bands (including Globalstar, Inmarsat, Iridium, and Orbcomm) in determining the relevant product and geographic markets for MSS providers.⁷ By adopting a presumption, however, that substitutes an arbitrary rule for reliance on market forces to determine the proper number of 2 GHz MSS competitors, the Commission will impede competition by artificially restricting access to 2 GHz spectrum.

Rather than ensuring strong 2 GHz MSS competition in telecommunications markets, the rule arbitrarily limits licensees' access to adequate spectrum and, if left in place, will continue to hamper development of 2 GHz MSS systems. The lack of sufficient spectrum available to 2 GHz MSS licensees has been a significant hindrance in attracting investment and developing strong business plans. ICO has consistently sought a minimum of 2 x 15 MHz of spectrum for its MSS system, and has argued repeatedly that access to adequate spectrum is a key factor in deploying a viable MSS system.⁸

ICO therefore agrees with TMI and TerreStar on the need for a significant spectrum assignment that corresponds with the deployment of a robust satellite system.

³ See *Amendment of the Commission's Space Station Licensing Rules*, 18 FCC Rcd 10760, 10789 (2003).

⁴ *Id.* at 10788-89.

⁵ See ICO Petition for Reconsideration, *Amendment of Commission's Space Station Licensing Rules and Policies*, Docket Nos. 02-34 & 02-248, at ii (Sept. 26, 2003). ICO incorporates by reference its objections to the rule and related arguments in its petition for reconsideration.

⁶ *Id.* at 6.

⁷ *Id.*

⁸ See Letter from Mobile Communications Holdings, Inc., Constellation Communications Holdings, Inc., ICO to Marlene Dortch, Sec'y, FCC (Dec. 12, 2002); see Letter from ICO to Marlene Dortch, Sec'y, FCC (Dec. 20, 2002); see Letter from ICO to Marlene Dortch, Sec'y, FCC (May 6, 2003).

Efficient use of satellite capacity dictates full loading throughout the estimated 15-year life span of the satellite, such that the bulk of satellite capacity is actively deployed and does not remain idle. Efficient use also requires access to sufficient bandwidth to accommodate the wider channelizations now being adopted as standard for delivery of mobile communications services.

For these reasons, ICO urges the Commission to divide the available 2 GHz spectrum between the two remaining 2 GHz MSS licensees, subject to the outcome of pending appeals of the 2 GHz MSS license cancellations.

Pursuant to section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed.

Sincerely,

/s/ Suzanne Hutchings Malloy
Suzanne Hutchings Malloy
Senior Regulatory Counsel

cc: Karl Kensinger
William Bell